

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

In re: Christopher W. Glenn, Debtor.	Bankruptcy Case No.: 23-30132 Chapter 11
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**OBJECTION OF ACAR LEASING LTD. d/b/a GM FINANCIAL LEASING TO
CONFIRMATION OF DEBTOR’S PLAN OF REORGANIZATION
DATED JULY 24, 2023**

[¶1] ACAR Leasing Ltd. d/b/a GM Financial Leasing (“GM”), a party in interest in the above-entitled chapter 11 bankruptcy case, objects to Debtor’s Plan of Reorganization (“Plan”) dated July 24, 2023, and filed as document number 54, for the following reasons.

[¶2] On May 21, 2021, Christopher W. Glenn (“Debtor”) entered into a Closed End Motor Vehicle Lease (“Lease”) with Ryan GMC Buick Cadillac (“Dealer”) for a new 2021 Cadillac Escalade ESV VIN# 1GYS4PKL8MR346984 (“Collateral”). A copy of the Lease is attached as Exhibit A. The Contract was assigned to GM. Under the terms and conditions of the Lease, Debtor promised to pay the total lease payments of \$69,526.32, in thirty-six (36) monthly payments of \$1,775.87 beginning May 21, 2021, and due on the 21st of each month. Debtor still owes \$23,006.42 over the term of the Lease.

[¶3] The Plan places GM in Class 3 regarding an unpaid Lease payment but provides that the claim “shall be paid *pari passu* with that of Class 4.” (Doc. ID# 54 at p.8). Class 4 is the class of “nonpriority, unsecured claims, excepting those expressly included in Class 3 (ACAR Leasing Ltd. d/b/a GM Financial Leasing”). Id. The creditors placed in Class 4 “will be paid, *pari passu*, after the Debtor pays the priority portion of the Class 1 claim herein.” Id.

[¶4] GM objects to the Plan because it is ambiguous regarding whether the Lease is being assumed or rejected. Debtor states in Class 3 that “[t]his claim is technically unsecured but correlates to a missed payment on an automobile leased by the Debtor and, as such, a failure to pay this claim would invite concerns about the claimant’s right to terminate the lease (which is accepted in this plan).” Id. (emphasis added). Section 6.01 states that Debtor assumes the unexpired leases set forth on lines 2.1 through 2.2 of Schedule G. Id. at p.9 However, the GM Lease is listed on line 2.3 of Schedule G. Id. at p.5 Accordingly, the Plan fails to adequately state the Lease’s treatment under the Plan as required by 11 U.S.C. § 1125.

[¶5] The Plan also fails to comply with 11 U.S.C. § 365, which provides:

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

[¶6] Assuming the Debtor intends to assume the Lease, the Debtor's Plan fails to comply with § 365(b)(1)(A). This statute requires the Debtor to cure the unpaid lease payment described in his Plan prior to or at the time of the assumption of the Lease. Rather, the Plan states that the Debtor will pay the defaulted lease payment to GM with other unsecured creditors instead of prior to or at the time of the assumption of the Lease. Further, the Plan fails to state when Debtor will cure the default payment. The Plan also fails to provide adequate assurance, as required under 11 U.S.C. § 365 (b)(1)(C), that the unpaid lease payment will be paid. Debtor must specify the amount to be paid and when it is to be paid prior to the assumption of the Lease.

[¶7] Wherefore, ACAR Leasing Ltd. d/b/a GM Financial Leasing requests that confirmation of the Plan be denied.

Dated: August 15, 2023.

/s/ Douglas W. Murch

Douglas W. Murch, ND ID # 05983

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ATTORNEYS FOR GM FINANCIAL LEASING

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee at the law firm of Conmy Feste Ltd., and is a person of such age and discretion as to be competent to serve papers.

That on August 15, 2023, she served a copy of:

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electronically by Notice of Electronic Filing upon all parties who have requested service in this case by filing the same via ECF with the Bankruptcy Court in the District of North Dakota and by U.S. Mail to the following:

Christopher Wayne Glenn
12548 24th Street NW
Watford City, ND 58854

/s/ Leslyn A. Anderson
Leslyn A. Anderson